S.B.Civil Writ Petition No.4093/2006

Khemraj Gameti.

vs.

Urban Improvement Trust, Udaipur & Anr.

Date : 2.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.AK Acharya, for the petitioner.
Mr.AK Jain, for the respondent no.1.

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Heard learned counsels for the parties finally as according to both the counsels, a short point is involved in this case.

Because of raising of dispute by the petitioner employee, the matter was referred to the Labour Court by the order of the State Government dated 7.9.1999. The issue referred to the Labour Court was whether the petitioner workman was removed from service from 1.1.1997 illegally ? and if not, then for what relief, the petitioner workman is entitled ?

The petitioner's claim petition was replied by the respondents and in the reply, they stated that the

petitioner was never appointed at Sunset Point in Doodh Talai, Udaipur as Chowkidar. It was stated that in the year 1991-1992, some work contract was awarded and the work was completed by the contractors. However, the petitioner was never in employment nor he discharged any duties under the employment of respondent Trust.

The petitioner workman submitted his affidavit in support of his claim and also produced the photostat copies of the documents of the respondent department to prove that he was employed by the respondent itself. Not only this, the petitioner also submitted application for summoning the relevant record from the respondents like attendance register and payment vouchers from 1.1.1994 to 1.1.1997. Said application was seriously opposed by the respondent Trust on the ground that since the petitioner was not in employment, therefore, he cannot summon any document from the respondents. However, the petitioner himself produced the copy of muster-roll of Sunset Point that too running from 1.1.1994 to 31.3.1997.

The respondent's witness Ramesh Chandra Somani, Executive Engineer, UIT in his cross examination admitted that the photocopy of attendance register (Ex.1) was the copy of the record of the respondent UIT. He stated that whether the petitioner was an employee of his department, he was not knowing.

On the basis of the record produced by the petitioner, the Labour Court though found that the petitioner worked from April, 1994 to 31.12.1996 but the relief was denied to the petitioner on the ground that the petitioner worked beyond 31.12.1996 upto March, 1997, therefore, he was not removed from service from 1.1.1997. According to the Labour Court, since the dispute was referred to Labour Court was whether the petitioner was removed from service from 1.1.1997 but it has been proved by the petitioner that he rendered the services upto 31.3.1997, therefore, the petitioner failed to prove that he was removed from 1.1.1997.

Learned counsel for the petitioner submitted that in identical facts and circumstances where there was a claim of another person Kishan Lal who was also working at same place i.e. Sunset Point, Doodh Talai at Udaipur and whose case was that he was appointed by the respondent UIT on 1.4.1994 and he was removed from 1.4.1997, the Labour Court on the same set of facts merely on the ground that in said case, removal was from 1.4.1997, granted relief of compensation to said Kishan Lal. Copy of said order passed by the Labour Court in Case No.229/99 has been placed on record by the petitioner as Annexure-2. Learned counsel for the petitioner confined his relief to only compensation as awarded to said Kishan Lal.

According to learned counsel for the petitioner, even if the State referred the dispute to the Labour Court by mentioning that the petitioner was removed from 1.1.1997 and it was found that he was removed from service from 1.4.1997, even then the service of the petitioner upto 31.12.1996 could not have been ignored by the Labour Court and the Labour Court should have granted at least relief of same compensation as awarded to the similarly situated person.

Learned counsel for the respondent UIT vehemently submitted that there is no illegality in the award passed by the Labour Court because the Labour Court cannot go beyond the reference and when the reference was only that whether the petitioner was removed from 1.1.1997, then it was the duty of the petitioner to prove this fact. There was no record about the petitioner's wrongful removal from service in violation of Industrial Disputes Act, 1947 from 1.4.1997 or any future date from 1.1.1997. In view of the above, learned counsel for the respondent UIT further submitted that the petitioner might have voluntarily abandoned service from 1.4.1997 and if he has abandoned his service, then he could not claim any relief from the employer.

I considered submissions of the learned counsel

for the petitioners and perused the facts of the case.

It is true that the issue referred to the Labour Court was whether the petitioner was removed from service illegally from 1.1.1997 but from the documentary evidence, the petitioner fully proved that he worked in the office of UIT, Udaipur from the year 1994 to 1997, then the respondent's contention that the petitioner was never in employment was the only defence and that defence stand fully disproved by the petitioner. In view of the fact when there was a limited defence of the respondent that the petitioner was not in employment of respondent than the respondent cannot say that the petitioner abandoned his service. In view of the above reasons, the award passed by the Labour Court is absolutely perverse and the Labour Court ignored the fact that the petitioner was a poor chowkidar employed by the respondent and his employment has been denied by the responsible officer of respondent UIT without there being any reason.

Since the petitioner has confined his relief to compensation as awarded to another employee Kishan Lal who was also removed from service from 1.4.1997 and whose initial appointment was alleged to be 1.4.1994, therefore, the petitioner is entitled to same relief.

In view of the above, this writ petition is allowed, the impugned award dated 30.11.2005 is set aside and it is held that the petitioner was wrongly removed from service from 1.1.1997. Instead of reinstatement in view of the petitioner's prayer of monetary benefits as given to similarly situated employee Kishan Lal, the same relief is granted to the petitioner and the petitioner shall be entitled to Rs.13,000/- from the respondent department and looking to the facts of the case, it will be appropriate to grant interest over the said amount at the rate of 6% p.a. from the date of award passed by the Tribunal dated 30.11.2005.

(PRAKASH TATIA), J.

S.Phophaliya